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9 **IN THE UNITED STATES DISTRICT COURT**

10 **NORTHERN DISTRICT OF CALIFORNIA**

11 **OAKLAND DIVISION**

12

13 FREMONT BANK, a California state
 14 chartered bank,

15 Plaintiff,

16 v.

17 ROBERT J. SIGNORELLI, individually and
 18 as Trustee of the SIGNORELLI FAMILY
 LIVING TRUST, dated April 8, 1994,
 amended February 28, 2001, November 22,
 2005, and January 5, 2015; KATHRYN R.
 19 SIGNORELLI, Trustee of the SIGNORELLI
 FAMILY LIVING TRUST dated April 8,
 1994, amended February 28, 2001, November
 22, 2005, and January 5, 2015; and
 21 SIGNORELLI FAMILY, L.P., a Texas
 limited partnership,

22 Defendants.

23 CASE NO. 18-cv-04808-HSG

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**REPLY MEMORANDUM OF POINTS
 AND AUTHORITIES IN FURTHER
 SUPPORT OF PLAINTIFF FREMONT
 BANK'S MOTION FOR AN
 ASSIGNMENT ORDER AND AN
 ORDER RESTRAINING JUDGMENT
 DEBTOR ROBERT SIGNORELLI**

Date: February 23, 2023
 Time: 1:00 p.m.
 Courtroom: 4
 Judge: Hon. Donna M. Ryu

1 Judgment was entered against Signorelli in April 2019, and interest has continued to accrue
 2 *for nearly four years.* But rather than making a good faith effort to satisfy the judgment, Signorelli
 3 has continually delayed and deflected.¹ His request for an exemption in response to Fremont
 4 Bank's motion for an assignment order is the latest in a long line of dilatory tactics, and smacks
 5 of bad faith. The financial statement he is required to provide fails to comply with the basic
 6 statutory requirements. It fails to state all of his income, and it lacks a list of assets and their value
 7 (including the IRA account that is the subject of this motion, and his ownership interest in several
 8 lucrative limited partnerships). It is not signed by his wife, who is required by statute to attest to
 9 its veracity. It does not compute Signorelli's net worth, which at his debtor's examination he
 10 estimated to be between \$2,000,000 and \$2,500,000. Nor has Signorelli met his burden of proof
 11 of establishing financial need for the FirstSun stock in his IRA, none of which he has ever sold or
 12 used to cover his expenses. At his debtor's examination, Signorelli testified that he does *not* use
 13 it for his and his wife's ongoing support. His request for an exemption should be denied.

14 **I. SIGMORELLI'S FINANCIAL STATEMENT IS LEGALLY DEFICIENT**

15 To qualify for an exemption, Signorelli was required to submit a financial statement that
 16 complies with Code of Civil Procedure section 703.530(b). That section states that the financial
 17 statement *shall include all of the following information:*

- 18 (1) The name of the spouse of the judgment debtor.
- 19 (2) The name, age, and relationship of all persons dependent upon the judgment debtor
 or the spouse of the judgment debtor for support.
- 21 (3) *All sources and the amounts of earnings and other income of the judgment debtor*
 22 and the spouse and dependents of the judgment debtor.
- 23 (4) *A list of the assets of the judgment debtor and the spouse and dependents of the*
 24 *judgment debtor and the value of such assets.*

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26 ¹ Fremont Bank's opening brief summarizes just a few of Signorelli's dilatory tactics, including
 27 his failure to appear for his debtor's examination in February 2022; his failure to file an opposition
 or appear at a civil contempt hearing in May 2022; the contempt finding against Signorelli in
 28 August 2022; and his failure to produce all responsive documents at his original debtor's
 examination on September 29, 2022. (Fremont Bank's Brief, 2:4-3:2.)

1 (5) All outstanding obligations of the judgment debtor and the spouse and dependents
 2 of the judgment debtor.

3 Moreover, section 703.530(c) states that the financial statement *shall be executed under*
 4 *oath by the judgment debtor and his or her spouse*, unless they are living separate and apart.

5 Signorelli's purported "financial statement" fails to comply with these requirements in
 6 several respects.

7 **A. Signorelli Failed to Disclose the Total Amount of His Income**

8 Signorelli's financial statement did not include the *entire* amount of his earnings and other
 9 income as required by Code of Civil Procedure section 703.530(B)(3). He lists "reliable income"
 10 of \$65,280 that consists in part of monthly distributions from a Royal Bank of Canada ("RBC")
 11 investment account and from a limited partnership called Bay City Partners. But he does not
 12 explain what he means by "reliable income" or how that is calculated. He does not disclose
 13 distributions he regularly receives from *other* partnership investments, including from Signorelli
 14 Family, L.P. ("Family L.P."). At his debtor's examination, Signorelli testified that he and his wife
 15 are 99% owners of Family L.P., and that they make distributions from the partnership to
 16 themselves *at their sole discretion* and *whenever they deem fit*:

17 Q. Well, do you and your wife receive money from the Family
 18 Limited Partnership?

19 A. We take money out as we need it in the form of a
 20 distribution.

21 Q. And who is the general partner of Signorelli Family Limited
 22 Partnership?

23 A. I am.

24 Q. What percentage of the Family Limited Partnership do you
 25 and your wife own?

26 A. Ninety-nine percent....

27 Q. So am I correct that when you need funds, you'll declare a
 28 distribution by the Family Limited Partnership to yourself?

A. Myself and the other partners.

Q. So when a distribution is made, what percentage of that
 distribution would you and your wife receive?

1 A. Ninety-nine percent.

2 Q. And then your son and daughter would each receive a half
3 of one percent?

4 A. That's correct.

5 Q. Do you require input from any other person to make a
6 distribution, or is that something that you, yourself, can
7 decide?

8 A. No, I decide.

9 (Loughrey Decl., Exh. A at 20:9-21:10.)

10 As detailed in the Kirschenbaum Declaration submitted in the companion motion for a
11 charging order (Docket 99-2), Signorelli testified that Family L.P. in turn owns partnership
12 interests in Pine Brook Capital Partners II, L.P. (“Pine Brook II”) and PBCP Feeder, L.P. (“Feeder
13 Partnership”).² He testified that the promoters of these partnerships raised billions of dollars to
14 invest in energy and finance companies, and that Family L.P. is one of many investors in the
15 partnerships. Signorelli produced account statements showing that Family L.P. made \$1,299,498
16 in capital contributions to Pine Brook II, and that Family L.P. received \$58,501 in cash
17 distributions for the period January 1 through June 30, 2022 and \$693,644 in cash distributions
18 over the lifetime of the investment. He also produced an account statement for Feeder Partnership,
19 showing that Family L.P. made \$2,245.577 in capital contributions, and that Family L.P. received
20 \$150,685 of cash distributions for the period January 1 through June 30, 2022, and \$2,935,224 in
21 cash distributions over the lifetime of the investment.

22 Thus, in just the first half of 2022, Family L.P. received \$209,186 in cash distributions
23 from Pine Brook II and Feeder Partnership, 99% of which went to Signorelli as he saw fit.
24 Signorelli’s failure to report this income on his financial statement, and to provide a true picture
25 of his net worth, shows a disturbing lack of candor to the Court. His claim for an exemption should
26 be denied on that basis alone.

27 ² Signorelli did not file any opposition to Fremont Bank’s Motion for an Order Charging Judgment
28 Debtor Signorelli Family, L.P.’s Partnership Interests in Pine Brook Capital Partners II, L.P. and
 PBCP Feeder, L.P. (Docket No. 99.)

1 **B. Signorelli Failed to Identify All of His Assets and to Disclose their Value**

2 Signorelli's financial statement did not include a list of his assets with their value, in
 3 violation of Code of Civil Procedure section 703.530(b)(4). This is striking given that at his
 4 debtor's examination, Signorelli estimated his net worth to be between \$2,000,000 and
 5 \$2,500,000. (Kirschenbaum Decl., Exh. A at 15:27-16:5.) He failed to list the value of the interest
 6 he owns in Family L.P., Pine Brook II, Feeder Partnership, Bay City Partners,³ and Spring Office
 7 Park.⁴ *He even failed to list the value of the IRA account that is the subject of this motion*, which
 8 he previously estimated to be about \$800,000. (Kirschenbaum Decl., Exh. A, 49:8-11.) He failed
 9 to identify and state the value of numerous bank accounts he owns, the cars he drives, the jewelry
 10 he and his wife enjoy, or any other assets that could be used to satisfy the judgment.

11 At his debtor's examination, Signorelli produced account statements from bank accounts
 12 he owns, including those at Bank of America (accounts ending in 8250 and 2247); Wells Fargo
 13 (accounts ending 7790 and 4733); Patelco Credit Union (account ending 2285); and Independent
 14 Financial (accounts ending 1760 and 0436)⁵. He also produced statements showing that he owns
 15 several RBC investment accounts (accounts ending 2224, 2226, and 2238.) (Loughrey Decl., ¶
 16 7.) *None* of those accounts are identified, together with their current balances, on Signorelli's
 17 financial statement.

18 At his debtor's examination, Mr. Signorelli testified that he and his wife drive two
 19 Mercedes that they purchased outright in January 2018 -- just months before Fremont Bank filed
 20 its complaint against them for failing to repay their loan. (Loughrey Decl., Exh. A at 13:16-25;
 21 45:15-46:3; Exh. B.) He produced documents showing that they own a substantial jewelry

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 23 ³ Signorelli and his wife, through Family L.P., own a partnership interest in Bay City Partners,
 24 L.P., the owner of a medical plaza in Bay City, Texas. He testified that Bay City Partners makes
 25 monthly cash distributions to Family L.P. that are deposited into a checking account at
 26 Independent Financial. (Loughrey Decl., Exh. A at 18:6-20:4.)

27 ⁴ Signorelli and his wife, through Family L.P., own a partnership interest in Spring Business Park,
 28 Ltd. located in Spring, Texas. He produced a K-1 for 2021 that shows that Family L.P.'s capital
 29 account was \$124,872. (Loughrey Decl., Exh. D.)

30 ⁵ Independent Financial account ending 1760 had a balance of \$228,503.87 as of August 31, 2022,
 31 the latest account statement that Signorelli provided. (Loughrey Decl., Exh. E.)

1 collection, including valuable earrings, bracelets, rings, necklaces, and watches. (Loughrey Decl.,
 2 Exh. A at 13:18-20; Exh. C.) But Signorelli's financial statement identifies no cars, no jewelry,
 3 no list of household furnishings, or any other items of value.

4 **C. Signorelli's Spouse Failed to Sign the Financial Statement Under Oath**

5 Signorelli's financial statement was not signed under oath by his wife, Kathryn R.
 6 Signorelli, in violation of Section 703.530(c). Ms. Signorelli's assets -- even if separate property
 7 -- must be included in the evaluation. But there is no sworn statement from Ms. Signorelli that the
 8 financial statement her husband provided is true, or that she has no assets.

9 **II. SIGNORELLI FAILED TO SHOW THE PROCEEDS OF THE IRA ACCOUNT
 10 ARE NECESSARY FOR HIS SUPPORT**

11 Signorelli argues that an assignment order would leave him and his wife "without sufficient
 12 income to support themselves." (Opp. Brief, 2:13.) He claims they have a "combined annual
 13 income of \$65,280 and nondiscretionary expenses of \$164,520, resulting in an annual shortfall of
 14 \$99,240." (*Id.*, 2:26-28.) As discussed above, that is simply not true as per Signorelli's own
 15 testimony. Moreover, the documents he produced show that Family L.P. – of which Signorelli
 16 and his wife at 99% owners – received over \$209,000 in cash distributions from Pine Brook II
 17 (\$58,501) and Feeder Partnership (\$150,685) just in the first half of 2022. He testified that they
 18 take distributions from Family L.P. as they see fit. They also have stakes in other partnerships,
 19 bank accounts, investment accounts, cars, jewelry, and other personal property. But none of this
 20 is reflected in his purported financial statement.

21 The case of *Choice Hotels Int'l, Inv. v. Penta Denver, LLC* (2015 U.S. Dist. LEXIS 79994,
 22 2015 WL 3830691) is instructive. In that case – like here -- the judgment debtor claimed an
 23 exemption on the ground that their net monthly finances operated at a significant loss. Also – like
 24 here – the judgment debtor and his wife owned substantial assets, including bank accounts,
 25 personal property, and interests in real estate. The District Court denied the request for an
 26 exemption on the grounds that *all* assets were to be considered, and not just liquid assets:

27 [T]he statute requires the Court to consider *all* property of the debtor.
 28 *See Cal. Code Civ. Proc. § 703.115.* Exhibit B reflects that the family
 has millions of dollars in assets including money in a bank account,
 personal property, and stakes in a number of high-valued properties.

[Citation.] In light of these substantial assets, the Court cannot conclude that the \$775 per month sought from [the spouse's] income is necessary for the family's support. The judgment debtor's argument to the contrary is unpersuasive. First, the judgment debtor asks the Court to focus only on his family's liquid assets – *i.e.*, the monthly income they use to pay necessary expenses. But the statute mandates that the Court take into account *all* property – whether “subject to enforcement” or not, and certainly does not cabin that consideration to liquid assets.

(*Choice Hotels*, 2015 U.S. Dist. LEXIS 79994 at *11-12 (italics in the original).) The Court here should similarly deny the claim for an exemption.⁶

In any event, an exemption is not an all-or-nothing affair; instead, “it exempts these accounts ‘only to the extent necessary to provide for the support of the judgment debtor when the judgment debtor retires and for the support of the spouse and dependents of the judgment debtor.’ [Citations.]” (*O'Brien v. AMBS Diagnostics, LLC* (2016) 246 Cal. App. 4th 942, 950, quoting Code Civ. Proc. § 704.115(e).) The debtor has the burden of establishing his property qualifies for exemption. (*Id.* at p. 948; *see Schwartzman v. Wilshinsky* (1996) 50 Cal. App. 4th 619, 626.)

Signorelli failed to make *any* showing that the funds held in the IRA are necessary for his and his wife's ongoing support. As discussed in Fremont Bank's opening brief, Signorelli's own testimony established that the FirstSun stock in his IRA is *not* necessary for his support during retirement. He testified that he acquired the stock approximately six years ago, has not sold any of the shares and does not use the shares to support himself or his family. (Kirschenbaum Decl. ¶ 16.) Nothing in Signorelli's opposition or in his request for an exemption disputes this. Moreover, as discussed above, Signorelli estimated his net worth to be between \$2,000,000 and \$2,500,000. He clearly has the current ability to meet his and his wife's regular living expenses without resorting to the FirstSun shares.

⁶ The judgment debtor in *Choice Hotels* also received monthly contributions from his parents, which were absent from his monthly expense chart. The District Court considered those contributions as well. (*Choice Hotels*, 2015 U.S. Dist. LEXIS 70004 at *10.) Here, Signorelli testified that he previously received income from his son, Thomas Signorelli, of \$5,000 to \$7,000 per month. (Loughrey Decl., Exh. A at 12:2-17.) While Thomas Signorelli is not obligated to contribute to his parents' support, it is certainly a possibility.

1 **III. SIGMORELLI'S PRIOR REQUEST FOR AN EXEMPTION WAS DENIED**

2 In August 2018, Fremont Bank filed an application for a right to attach order, to which
 3 Signorelli sought an exemption on the ground that the property was "necessary for the support of
 4 a defendant who is a natural person or the family of such defendant supported in whole or in part
 5 by the defendant." Signorelli argued, among other things, that "It is critical that Defendant have
 6 their accounts unencumbered to allow [sic] them to pay personal bill [sic] and living expenses for
 7 things such as food, gasoline, health insurance and other basic everyday living expenses." (Docket
 8 No. 32, at 4:25-28.) Even though the financial information provided by Signorelli at that time was
 9 substantially more robust than that produced here, Judge Gilliam nevertheless found that "the
 10 showing is inadequate to support the 'necessary for support' exemption." (Docket No. 33, at 8:6-
 11 8.) Upon Fremont Bank's renewed application for a right to attach order, Judge Gilliam found yet
 12 again in January 2019 that Signorelli's showing for an exemption was inadequate. (Docket No.
 13 37, at 3:4-8.)

14 Nothing has changed since the Court previously twice denied Signorelli's claim for an
 15 exemption. Indeed, Signorelli's showing here is substantially less than it was the prior two times.
 16 His request for an exemption should be denied yet again.

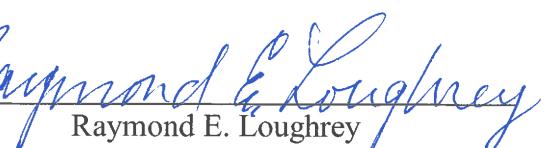
17 **IV. CONCLUSION**

18 For the aforementioned reasons, the Court should enter an order directing Signorelli to
 19 assign to Fremont Bank his right to any distributions, dividends, and payments arising from his
 20 ownership of FirstSun stock, and restraining Signorelli from transferring his right to payment to a
 21 third party, or from otherwise hindering Fremont Bank's right to payment.

22 Dated: January 30, 2023

23 KIRSCHENBAUM LAW, PC

24 By:

25 
 26 Raymond E. Loughrey
 27 Attorneys for Plaintiff
 28 FREMONT BANK